

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8071 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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KISHOR MULUBHAI VALA

Versus

COMMISSIONER OF POLICE RAJKOT  
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Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3  
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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 6th September, 1998 made by the Commissioner of Police, Rajkot City under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2(b) of the Act. As many as 4 offences punishable under the Bombay Prohibition Act have been registered against the petitioner. In each of the said cases, substantial quantity of foreign liquor was recovered from the petitioner. Three of the said cases are pending trial and one of them is pending investigation. Besides, the police has also recorded statements of two witnesses in respect of the petitioner's bootlegging activities and its adverse effect on public tranquillity and the even tempo of public life. The petitioner's activities are, therefore, held to be prejudicial to the maintenance of public order.

4. It is submitted that one of the relatives of the petitioner made a representation to the Home Minister on 22nd September, 1998 and applied for copy of the FSL report in the offence pending investigation. However, though the representation made on 22nd September, 1998 is decided, the copy of FSL report is not furnished to the petitioner. It is argued that the copy of FSL report in respect of the material collected from the possession of the petitioner is a vital document without which the petitioner could not have made an effective representation against the order of detention. The specific contention raised in this regard has been answered by the Detaining Authority. It is submitted that while forming the subjective satisfaction, the detaining authority had not relied upon FSL report, and therefore, it was not required to be furnished to the petitioner. In the matter of Ranvirsinh Kalyansinh [Spl. Civil Application No. 7490 of 1998, decided on 12th July, 1999], I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make an effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu; except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports

were yet not available. Besides, even after the petitioner's demand vide his representation dated 22nd September, 1998, such reports are not furnished to the petitioner, neither the said representation has been answered. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

5. For the reason recorded hereinabove, the petition is allowed. The impugned order dated 6th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*